IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.720 OF 2004

Tukaram Jyoti Shinde .. Appellant

Versus

Bala Nana Sawant & Ors. .. Respondents

Mr.L.S.Gaikwad for appellant

CORAM : P.V.KAKADE, J.

DATE : 7TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Karad dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Karad dismissing the suit filed by the appellant-plaintiff for specific performance of oral agreements dated 5.7.1962 as well as 24.3.1969.

2. I have heard the learned counsel for the

appellant. Perused the record.

3. The plaintiff came with the case that he was owner of Gat No.205, admeasuring 1 hector, 15R situated at village Sakurde, as he was having cordial relations with deceased Bala Nana Sawant, who was the father of defendant nos.1 to 4 and grandfather of defendant nos.5 to 8. In the year 1962 and 1969 he was in need of money and approached Nana Sawant, who fulfilled his requirements. As a security to the said transaction the suit land was transferred in his name in respect of 2/3 share in the said land. As the defendants did not agree to reconvey the property insptie of his willingness to repay the amount of Rs.7000/=, the plaintiff constrained to file the present suit for specific performance. The defendants challenged the suit on various grounds, inter alia, submitting that the suit land belonged them and the theory of oral agreements between their ancestry Nana and the plaintiff was false and as such the suit was sought to be dismissed.

4. The learned trial judge after hearing both the parties and relying on the available evidence on record came to the conclusion that the theory of oral agreement

was not supported by any documentary or other evidence nor it was established that the plaintiff was ready and willing to perform his part of the contract and as such the plaintiff was non suited. The appeal was carried to the District Court. The learned Addl.District Judge after hearing both the parties came to the conclusion that the plaintiff had failed to prove his allegations for want of cogent evidence and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise so called question of law to the effect that the impugned lands were Inam land and due to the provisions of Vatan Abolition Act, the lands were granted to the plaintiff and hence those were protected under the provisions of Section 8 of the Inferior Village Watan Abolition Act, 1958 and therefore the suit was required to be decreed. Suffice it to say that this point is raised for the first time in this appeal and it was neither agitated at the trial stage nor challenged in the first appeal and therefore, cannot be taken into account at this stage, especially in view of the fact that there is absolutely

no evidence brought on record in support of such contention that the lands were Inam lands. Moreover, there is no evidence to establish the theory of alleged oral agreements.

6. In the result the appeal must fail, and therefore, stands dismissed. Consequently Civil Application No.791 of 2004 also stands dismissed.

.